IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

RCRev..No. 46 of 2007()

(AGAINST THE JUDGMENT IN RCA.205/2003 OF THE RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM AND THE ORDER IN RCP.68/2003 OF THE ADDL.MUNSIFF AND RENT CONTROL COURT, ERNAKULAM)
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PETITIONER/RESPONDENT/RESPONDENT:

SASIDHARAN PILLAI, S/O. KANNAPPAN,
CHAKRAVARTHY TEXTILES, DOOR NO.32/2422,
KUNNATHU BUILDINGS, S.N.JUNCTION,
PALARIVATTOM, ERNAKULAM.

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENT: APPELLANT/PETITIONER:

K.M.SUDHEER KUMAR, S/O. K.K.MADHAVAN,
KUNNATHU HOUSE, S.N.JUNCTION, PALARIVATTOM,
ERNAKULAM.

BY ADV. SRI.K.C.CHARLES
SMT.LAKSHMI T.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

R.C.Rev. No. 46 of 2007 - B

Dated, this the 17th day of August, 2007

ORDER

Balakrishnan Nair, J.

Tenant is the revision petitioner and the landlord is the respondent.

2. The landlord sought eviction under section 11(8) of the Kerala Buildings (Lease and Rent Control) Act (for short, the Act). The petition schedule room is one of the three rooms in the ground floor of a two storied building. The two other rooms in the ground floor on the two sides of the tenanted room is occupied by the landlord and his wife respectively. The landlord is running the business of STD Booth, typewriting, photostat, ammonia printing, fax etc. The door number of the tenanted premises is 32/2422. The landlord's room bears door No. 32/2423 and the room occupied by his wife is No.32/2421. The landlord's wife is running a tailoring shop in the room. According to the landlord, he wants to expand the business by opening an internet cafe in the room occupied by the tenant and therefore an application was filed under sec.11(8) of the Act before the Rent Controller. The tenant resisted the application contending that the need urged for expansion of the business is unfounded. The monthly rent of the room was Rs.800/-. The landlord wanted to enhance it to Rs.1500/- per month. The tenant did not oblige. The tenant moved the president of the Kerala Merchants' Association for settlement of the dispute. But their conciliatory efforts did not yield any results. So the

landlord thereafter filed the Rent Control Petition seeking eviction which is not supported by any bona fides.

3. Before the Rent Controller, from the side of the landlord PWs.1 and 2 were examined. From the side of the tenant, RWs.1 to 5 were examined. Exts.A1 to A16 were marked from the side of the landlord. Exts.C1, C1(a), X1 and X2 were also marked.

4. After hearing both sides the Rent Controller dismissed the application. The same was affirmed by the Appellate Authority also. The landlord filed Rent Control Revision No.302/2005. This court by order dated 5.6.2006 allowed the revision and remanded the matter to the Appellate Authority for fresh consideration of the matter. After remand, from the side of the landlord, Exts.A17 to A20 and from the side of the tenant, Exts.B1 to B6 were marked. After hearing both sides, the Appellate Authority allowed the prayer of the landlord for eviction under sec.11(8). This revision is filed challenging the said judgment of the Appellate Authority, by the tenant.

5. The main point canvassed by the learned counsel for the revision petitioner was that there was sufficient space available in the existing room in the possession of the landlord and therefore additional space is unnecessary for expanding the business. The learned counsel for the petitioner pointed out that the commissioner visited the room of the landlord without notice to the tenant. The landlord packed the room with

old typewriters, fax machines etc. so that the commissioner would report that there is lack of space for expanding the business. Though this point was asserted by the tenant in the box and also highlighted in the cross-examination of the commissioner, the Appellate Authority failed to advert to the above aspect. Thus the Appellate Authority misread the evidence of the commissioner and the tenant on this point, it is submitted.

6. It is a fact that the commissioner has reported that almost all the space in the landlord's room was occupied by the STD booth, fax machine, photostat machine, typewriter etc. So it was found by the Appellate Authority that there was no sufficient space for the expansion of the business. But we feel that even assuming that there was some space, the need put forward by the landlord for an additional room for starting an internet cafe is a bona fide need. It may not be possible to conveniently run an internet cafe in the existing room in which various gadgets are there. So, if the landlord feels that a room itself is necessary for running the internet cafe, the same can be considered only as a bona fide requirement. Further, the contention of the tenant that the Rent Control Petition was filed only for the reason of his failure to pay the enhanced rent is also dealt with by the Appellate Authority. It was held that even assuming that there was a demand for enhancement of rent and as it was not given, the landlord thought that the room can be put to better use so that he can get better earnings, it cannot be said that there was no bona

fide need for seeking eviction. We think that the said view expressed by the Appellate Authority is also a plausible view on the facts. The Appellate Authority is the final court on facts. Going by the materials produced in this case, the view taken by the Appellate Authority regarding the bona fide need of the landlord for one additional room for starting a new internet cafe is a reasonable view taken on facts with which we cannot interfere under section 20 of the Act.

In the result the revision petition fails and it is dismissed.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

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